



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0477]

RIN 1625-AA00

Safety Zones; Fireworks Displays in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing fourteen safety zones for fireworks displays within the Captain of the Port (COTP) Long Island Sound Zone. This action is necessary to provide for the safety of life on navigable waters during these events. Entry into, transit through, mooring or anchoring within these zones is prohibited unless authorized by the COTP Sector Long Island Sound.

DATES: This rule is effective from June 23, 2012 until July 21, 2012.

This rule will be enforced during the specific dates and times listed in Table of §165.T01-0477.

ADDRESSES: Documents mentioned in this preamble are part of

docket [USCG-2012-0477]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Joseph Graun, Prevention Department, U. S. Coast Guard Sector Long Island Sound, (203) 468-4544, [Joseph.L.Graun@uscg.mil](mailto:Joseph.L.Graun@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LIS	Long Island Sound

### A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters from the hazardous nature of fireworks including unexpected detonation and burning debris. We spoke with each event sponsor and each indicated they were unable and unwilling to move their event date to a later time for the following reasons.

The sponsor for North Bay Fourth of July Fireworks stated they are unwilling to reschedule their event because it is held in conjunction with the Independence Day holiday. Many individual have made holiday plans based on this fireworks event,

changing the date would cause numerous cancelations and hurt small businesses.

Sponsors for Goren Wedding Fireworks, Goldstein Party Fireworks, National Golf Links Fireworks and Connetquot River Boat parade Fireworks were not aware of the requirements for submitting a marine event application 135 days in advance resulting in a late notification to the Coast Guard. The sponsors are now aware of this for future events. It is not viable for the sponsors to reschedule the event due to other activities being held in conjunction with these fireworks display, including a wedding and Independences Day celebrations involving many out of town guests.

The sponsor for Salute to Veterans Fireworks, Devon Yacht Club Fireworks, Dolan Family Fourth Fireworks, Islip Fireworks, Madison Fireworks, Stratford Fireworks, Rowayton Fireworks, Quarentello Wedding Fireworks, and Niantic Bay Fireworks submitted marine event applications with 135 day notice and on April 4, 2012 the Coast Guard provided the public with prior notice when it published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations and Safety Zones; Marine Events in Captain of the Port Sector Long Island Sound Zone, in the Federal Register (77 FR 20324). The NPRM proposed these events and advertised a public comments period. We received no comments on the NPRM. No requests for a public meeting were

received and no public meetings were held. These events will take place in less than 30 day and cannot be move to a later date because many individuals made holiday plans based on these fireworks events and changing the dates would cause numerous cancelations and hurt small businesses.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

#### B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

This rulemaking establishes marine events involving fireworks displays on the navigable waters of COTP Sector LIS zone. This rule is necessary to protect waterway users from the dangers inherent to fireworks displays.

#### C. Discussion of the Final Rule

This temporary rule establishes safety zones for fourteen fireworks displays in the COTP Sector LIS zone.

<b>Fireworks Display Events</b>	
<b>1 Goldstein Party Fireworks</b>	• Location: on Sag Harbor Cove off of Ferry Road, Sag Harbor, NY
<b>2 Salute to Veterans Fireworks</b>	• Location: Waters of Reynolds Channel off Hempstead, NY.
<b>3 Goren Wedding Fireworks</b>	• Location: on Bellport Bay 700 feet east of Point Road, Bellport, NY
<b>4 Connetquot River Boat Parade Fireworks</b>	• Location: on the Great South Bay off Snapper Inn Restaurant, Oakdale, NY
<b>5 North Bay 4<sup>th</sup> of July Fireworks</b>	• Location: on the Great South Bay in Patchogue Bay 4000 feet south east of Blue Point, NY
<b>6 National Golf Links Fireworks</b>	• Location: on the Great Peconic Bay three quarters of a mile north west of Bullhead Bay, Shinnecock, NY
<b>7 Devon Yacht Club Fireworks</b>	• Location: Waters of Napeague Bay, in Block Island Sound off Amagansett, NY.
<b>8 Dolan Family Fourth Fireworks</b>	• Location: Waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY.
<b>9 Islip Fireworks</b>	• Location: Waters of the Great South Bay off Bay Shore Manor Park, Islip, NY.
<b>10 Madison Fireworks</b>	• Location: Waters of Long Island Sound off Madison Beach in Madison, CT.
<b>11 Stratford Fireworks</b>	• Location: Waters of Long Island Sound surrounding Short Beach Park in Stratford, CT.
<b>12 Rowayton Fireworks</b>	• Location: Waters of Long Island Sound south of Bayley Beach Park in Rowayton, CT.
<b>13 Quarentello Wedding Fireworks</b>	• Location: Waters of the Great South Bay south east of Brown Point in Sayville, NY.
<b>14 Niantic Bay Fireworks</b>	• Location: Waters of Niantic Bay 1500 feet west of the Niantic River Railroad Bridge in Niantic, CT.

Because large numbers of spectator vessels are expected to

congregate around the location of these events, these regulated areas are needed to protect both spectators and participants from the safety hazards created by them including unexpected pyrotechnics detonation and burning debris.

This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the COTP or designated representative.

The Coast Guard has determined that these regulated areas will not have a significant impact on vessel traffic due to their temporary nature, limited size, and the fact that vessels are allowed to transit the navigable waters outside of the regulated areas. The COTP will cause public notifications to be made by all appropriate means including but not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on several of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The regulated areas will be of limited duration and cover only a small portion of the navigable waterways. Furthermore, vessels may transit the navigable waterways outside of the regulated areas. Vessels requiring entry into the regulated areas may be authorized to do so by the COTP or designated representative.

Advanced public notifications will also be made to the local maritime community by the Local Notice to Mariners as well as Broadcast Notice to Mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that



this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the designated regulated areas during the enforcement periods stated for each event listed below in the List of Subjects.

The temporary safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: the regulated areas will be of limited size and of short duration, and vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas. Additionally, notifications will be made before the effective period by all appropriate means, including but not limited to the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

## 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INTFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical

Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1

2. Add §165.T01-0477 to read as follows:

§165.T01-0477 Safety Zones; Fireworks Displays in Captain of the Port Long Island Sound Zone.

(a) Regulations. The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the events

listed in the TABLE of §165.T01-0477. These regulations will be enforced for the duration of each event.

(b) Definitions. The following definitions apply to this section:

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Vessel operators desiring to enter or operate within the regulated areas should contact the COTP or the designated representative via VHF channel 16 or by telephone at (203) 468-4404 to obtain permission to do so.

(d) Spectators shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates

and times as modified through the Local Notice to Mariners, unless authorized by COTP or designated representative.

(e) The COTP or designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(f) The regulated area for all fireworks displays listed in the TABLE of §165.T01-0477 is that area of navigable waters within a 1000 foot radius of the launch platform or launch site for each fireworks display. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS-STAY AWAY." This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background. Shore sites used in these locations will display a sign labeled "FIREWORKS-STAY AWAY" with the same dimensions.

**Table of §165.T01-0477**

<b>Fireworks Display Events</b>	
<b>1 Goldstein Party Fireworks</b>	<ul style="list-style-type: none"><li>• Date: June 23, 2012</li><li>• Rain date: June 24, 2012</li><li>• Time: 8:30 p.m. to 10:30 p.m.</li><li>• Location: a point in Sag Harbor Cove off of Ferry Road, Sag Harbor, NY in approximate position 41°00'15.39"N, 072°18'21.92"W (NAD 83).</li></ul>
<b>2 Salute to Veterans Fireworks</b>	<ul style="list-style-type: none"><li>• Date: June 23, 2012</li><li>• Rain date: June 30, 2012</li><li>• Location: Waters of Reynolds Channel off Hempstead, NY in approximate position 40°35'36.62"N, 073°35'20.72"W (NAD 83).</li></ul>



<b>3 Goren Wedding Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: June 30, 2012</li> <li>• Rain Date: July 1, 2012</li> <li>• Time: 8:30 p.m. to 10:30 p.m.</li> <li>• Location: a point in Bellport Bay 700 feet east of Point Road, Bellport, NY in approximate position 40°44'31.18"N, 072°56'31.38"W (NAD 83).</li> </ul>
<b>4 Connetquot River Boat Parade Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: July 3, 2012</li> <li>• Rain Date: July 5, 2012</li> <li>• Time: 8:30 p.m. to 10:30 p.m.</li> <li>• Location: a point on the Connetquot River off Snapper Inn Restaurant, Oakdale, NY in approximate position 40°43'32.38"N, 073°9'2.64"W (NAD 83).</li> </ul>
<b>5 North Bay 4th of July Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: July 4, 2012</li> <li>• Rain Date: July 5, 2012</li> <li>• Time: 8:30 p.m. to 10:30 p.m.</li> <li>• Location: a point on the Great South Bay in Patchogue Bay 4000 feet south east of Blue Point, NY in approximate position 40°44'6.28"N, 073°1'2.5"W (NAD 83).</li> </ul>
<b>6 National Golf Links Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: July 6, 2012</li> <li>• Rain Date: July 7, 2012</li> <li>• Time: 8:30 p.m. to 10:30 p.m.</li> <li>• Location: a point on the Great Peconic Bay ¾ of a mile north west of Bullhead Bay, Shinnecock, NY in approximate position 40°55'11.79"N, 072°28'4.34"W (NAD 83).</li> </ul>
<b>7 Devon Yacht Club Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: July 7, 2012</li> <li>• Rain date: July 8, 2012</li> <li>• Location: Waters of Napeague Bay, in Block Island Sound off Amagansett, NY in approximate position 40°59'41.4"N, 072°6'8.7"W (NAD 83).</li> </ul>
<b>8 Dolan Family Fourth Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: July 4, 2012</li> <li>• Rain date: July 5, 2012</li> <li>• Location: Waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY in approximate position 40°53'42.50"N, 073°30'04.30"W (NAD 83).</li> </ul>

<b>9 Islip Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: July 4, 2012</li> <li>• Rain date July 5, 2012</li> <li>• Location: Waters of the Great South Bay off Bay Shore Manor Park, Islip, NY in approximate position 40°42'24"N, 073°14'24"W (NAD 83).</li> </ul>
<b>10 Madison Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: July 4, 2012</li> <li>• Rain date: July 7, 2012</li> <li>• Location: Waters of Long Island Sound off Madison Beach in Madison, CT in approximate position 41°16'3.93"N, 072°36'15.97"W (NAD 83).</li> </ul>
<b>11 Stratford Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: July 3, 2012.</li> <li>• Rain date: July 5, 2012</li> <li>• Location: Waters of Long Island Sound surrounding Short Beach Park in Stratford, CT in approximate position 41°09'50.82"N, 073°6'47.13"W (NAD 83).</li> </ul>
<b>12 Rowayton Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: July 4, 2012</li> <li>• Rain date: July 5, 2012</li> <li>• Location: Waters of Long Island Sound south of Bayley Beach Park in Rowayton, CT in approximate position 41°03'11"N, 073°26'41"W (NAD 83).</li> </ul>
<b>13 Quarentello Wedding Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: July 21, 2012</li> <li>• Rain date: none</li> <li>• Location: Waters of the Great South Bay south east of Brown Point in Sayville, NY in approximate position 40°43'19"N, 073°03'53"W (NAD 83).</li> </ul>
<b>14 Niantic Bay Fireworks</b>	<ul style="list-style-type: none"> <li>• Date: July 6, 2012</li> <li>• Rain Date: July 7, 2012</li> <li>• Location: Waters of Niantic Bay 1500 feet west of the Niantic River Railroad Bridge in Niantic, CT in approximate position 41°19'22.59"N, 072°11'3.47"W (NAD 83).</li> </ul>

Dated: June 7, 2012

J. M. Vojvodich  
Captain, U. S. Coast Guard  
Captain of the Port Sector Long Island Sound

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